IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 475 OF 1989

Shri Ishwara Lokappa Bagali ... Appellant

V/s

Shri Sangappa Lokappa Bagali ... Respondent

Shri V.B. Rajune for the appellant.

Miss A.B. Kololgi holding for Shri t.S. Ingale for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 14TH OCT., 2004.

P.C.:

1. This is an appeal preferred by the appellant/ plaintiff against the judgment and order dated 4.1.1989 passed by the Addl. District Judge, Sangli, dismissing the appeal and confirming the order of dismissal of the suit passed by the Civil Judge, Jr.Divn., Jath, dated 31.8.1983.

2. The plaintiff came with the case that he is owner of the land Survey No.187/1 situated at Village Sonyal, Tal. Jath. Land Survey No. 187/2 is owned by the respondents. There was partition between appellant and deceased defendant about 15-16 years prior to the suit.

Deceased Sangappa demanded some portion out of the land Survey No. 187/1 to construct a temporary Vasti and the cattle shed for the purpose of harvesting season. Deceased Sangappa being real brother of appellant, the appellant allowed him to construct temporary shed. Therefore, deceased Sangappa started digging pits for the temporary shed in 60 ft. x 60 ft. area out of land Survey No. 187/1. The appellant requested him not to construct the permanent construction, but he did not listen to him, and hence the suit came to be filed for possession of the encroached portion from deceased Sangappa. Sangappa died during the pendency of the suit and his legal heirs were brought on record. They came with the contention that the encroached portion is shown in the map filed by the Court Commissioner and further submitted that there was no encroachment made by them and, as such, the suit was sought to be dismissed with costs.

The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that plaintiff failed to prove the encroachment by the respondent and hence dismissed the suit.

3. The appeal carried to the District Court at Sangli

was adjudicated on merits and the lower appellate Court endorsed the finding of the lower Court and the appeal was dismissed. Hence the present appeal.

4. At the outset, it may be noted that, at the time of admission, the substantial question of law was raised to the effect that, whether the appellant-plaintiff had proved his title to the suit site and, therefore, entitled to decree for eviction of the respondent. In my considered view, this could not be the question of law, leave aside the substantial question of law, because it is clear from the record that the entire dispute involved is rested upon issues of facts between the parties and both the Courts below are seen to have appreciated the entire evidence in proper perspective, however, since the appeal is admitted, I think it proper to look into the factual aspects also.

5. The entire dispute revolves around the alleged encroachment and map drawn by the Court Commissioner relating to Survey No.187 in order to ascertain encroachment on the property. However, perusal of the map shows that it conspicuously silent on partition aspect and fails to show sub-divisions of Survey Nos. 187/1 and 187/2. In other words, the map plainly shows

the Survey No.187 only and also does not indicate what is the area of alleged encroachment. It is to be noted that, both the parties were present when the Court Commissioner visited the site and took the inspection of the property. Inspite of this fact, as can be seen from the notes of the Court Commissioner, none of the parties indicated the encroached portion of the property and, therefore, it did not reflect in the said map. The map in question was the only evidence on record to ascertain whether there was any encroachment or not as alleged by the plaintiff. Both the Courts below have come to the conclusion that for want of evidence the alleged encroachment is not proved and, therefore, the suit for possession of allegedly encroached portion of the land was liable to be dismissed.

6. On the basis of these aspects, I have no hesitation to hold that there is no substantial question of law involved in this appeal and, as such, by virtue of Sec.100 of the C.P.C., it deserves to be dismissed with no order as to costs.

Hence, the appeal stands dismissed with no order as to costs.

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